

SALMOND & HEUSTON

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TWENTIETH EDITION

R.F.V. HEUSTON AND R.A. BUCKLEY



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SALMOND AND HEUSTON
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LAW OF TORTS

TWENTIETH EDITION

by

R. F. V. HEUSTON, D.C.L., F.B.A.

Honorary Fellow of Pembroke College, Oxford

Honorary Bencher of Gray's Inn, and of the King's Inns, Dublin

and

R. A. BUCKLEY, M.A., D.PHIL.

Fellow of Mansfield College, Oxford

Of Lincoln's Inn, Barrister

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DEDICATION OF SIXTH EDITION

[By the Author]

TO THE MEMORY OF
MY SON

WILLIAM GUTHRIE SALMOND
A CAPTAIN IN THE NEW ZEALAND ARMY
WHO IN FRANCE ON THE 9TH DAY OF JULY, 1918
GAVE UP HIS LIFE
IN THE TWENTY-SIXTH YEAR OF HIS AGE

PREFACE TO THE TWENTIETH EDITION

The scope and object of this 20th edition of Sir John Salmond's textbook remains as stated by the author in his preface to the 1st edition. But 85 years on the complexity of life has made it impossible for us to imitate completely his admirable brevity and clarity.

As the 21st century comes into view, probably the most important fact to record about the law of torts is that it is still in existence—and in a form which Salmond would at once recognise. In other words, tort has not been replaced by a system of no-fault insurance such as that recommended by the Pearson Commission nearly 15 years ago. Nor, if we interpret the political scene correctly, will it be replaced during the lifetime of this edition.

On the other hand, there are many signs that the European dimension of torts will increase significantly. In particular, if it becomes possible to recover damages from a government for loss caused by the non-implementation of an EC Directive, an explosion in litigation is likely, which will require the brief section now devoted to Eurotorts to be expanded into a chapter.

In the Anglo-American dimension close links will no doubt continue. But, as the leading authority in this area has remarked, English lawyers will continue to be surprised by "the abrasive, prominent and controversial role played by the tort process in American public life" (Fleming, *The American Tort Process* (1988), p. v).

There are two major changes of structure or arrangement. First, we have abandoned the former system of numbering the sections consecutively throughout the book, and followed the general practice of numbering (and so cross-referencing) by chapters and sections within each chapter.

Secondly, there is now a distinct chapter on New and Emergent Torts (No. 3), as there are also on Vicarious Liability (No. 21) and Damages for Personal Injuries (No. 24). The chapter on Defamation (No. 8) remains over-long, despite all our efforts. The basic problem here is that Parliament has refused to attend to the many calls for reform of this part of the law. In addition we have had to deal with four major appellate decisions—on publication (*Slipper v. B.B.C.*), on privilege and fair comment (*Kingshott v. Associated Kent Newspapers*, and *Telnikoff v. Matusевич*), and damages (*Sutcliffe v. Pressdram*).

Other, more minor, changes include the rearrangement of the material on statutory authority and reversionary interests. We are not sure that we have always found the best places for developments relating to unborn children, rape and AIDS, but we resisted the temptation to have a new section entitled Sex and Torts.

So far as changes of substance are concerned, the last 20 years have been dominated by the problem of economic loss in negligence. At one stage it seemed as if it would be impossible to produce a coherent account of the law within a reasonably brief chapter. Fortunately the decision of the House of Lords in *Murphy v. Brentwood D.C.* [1991] 1

A.C. 398, whatever else may be said about it, has eased the editorial task, in that it enabled us to treat as legal history many appellate court judgments (lengthy and learned though they were) of the eighties.

The Table of Statutes has been carefully checked, and obsolete citations accordingly deleted. It is interesting to note that only 34 pre-1900 statutes are cited in this edition in comparison with 162 dating from post-1900.

It would have involved a disproportionate amount of effort to make a similar count for the Table of Cases. But the footnotes have been carefully combed for obsolete decisions, and a surprising number detected and quietly deleted.

The text has been revised in the light of the material available to us on October 31, 1991, but it has occasionally been possible to insert brief references to later developments. Readers may be glad to know that the text is approximately 100 pages shorter than the previous edition. Although we jointly share editorial responsibility for the whole work, the preparation of Chapters 5 and 24, along with Chapters 9–13 inclusive, was undertaken primarily by R.A.B. and that of all the remaining chapters by R.F.V.H. We are grateful to Professor E. M. Barendt and Mr. P. B. Carter for help with the complex material on social security benefits and conflict of laws respectively. We are also indebted to our publishers for their support and encouragement.

R. F. V. Heuston
R. A. Buckley

June, 1992

PREFACE TO THE FIRST EDITION

I have endeavoured in this book to set forth the principles of the law of Torts with as much precision, coherence, and system as the subject admits of, and with as much detailed consideration as is necessary to make the work one of practical utility. No book is justified by the good intent of its author: but I hope that the present work will be found of use to lawyers and to students of law as a general exposition, in moderate compass, of an extensive and in some respect difficult and imperfectly developed department of our legal system.

J.W.S.

WELLINGTON, NEW ZEALAND,
August 5, 1907

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